

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

JEFF LINDSEY,
Plaintiff
v.
NCO FINANCIAL SYSTEMS, INC.,
Defendant
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Case No.:
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COMPLAINT AND DEMAND FOR
JURY TRIAL
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(Unlawful Debt Collection Practices)

COMPLAINT

JEFF LINDSEY (“Plaintiff”), by his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has an office in the Commonwealth of Pennsylvania and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).
 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

6. Plaintiff is a natural person residing in Rogers, Arizona, 72756.
 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).
 8. Defendant is a national debt collection company with corporate headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

1 12. In particular, the FDCPA broadly enumerates several practices considered
2 contrary to its stated purpose, and forbids debt collectors from taking such action. The
3 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not
4 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
5 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
6 collector may not use any false, deceptive, or misleading representation or means in connection
7 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
8 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
9 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
10 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
11 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
12 connection with the collection of a debt.

14 13. In enacting the FDCPA, the United States Congress found that “[t]here is
15 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
16 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
17 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
18 additionally found existing laws and procedures for redressing debt collection injuries to be
19 inadequate to protect consumers. 15 U.S.C. § 1692b.

21 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
22 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
23 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
24 collection practices are not competitively disadvantaged, and to promote consistent State action
25 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

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2 **FACTUAL ALLEGATIONS**
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4 15. At all relevant times, Defendant was attempting to collect an alleged consumer
5 debt from Plaintiff.

6 16. The alleged debt at issue arose out of transactions, which were primarily for
7 personal, family, or household purposes.

8 17. On February 2, 2011, Plaintiff got into an automobile accident involving another
9 vehicle.

10 18. On May 6, 2011, Plaintiff went to court to determine his role in the automobile
11 accident and was found not at fault for causing the accident.

12 19. Beginning on May 10, 2011 Defendant, its agents, employees, and servants,
13 engaged in debt collection activities seeking payment from Plaintiff.

14 20. Defendant's representative demanded Plaintiff pay \$1,131.05 in relation to an
15 alleged debt that stemmed from the automobile accident.

16 21. Plaintiff tried to explain to Defendant's representative that he was found not at
17 fault by a court of law for the automobile accident as there was snow on the ground.

18 22. Defendant's representative stated in response: "so I guess it was the f-cking
19 snows fault then?"

20 23. Defendant, its employees and servants continued to harass Plaintiff by making
21 continuous calls to his cellular telephone number, home telephone number and work phone
22 number.

23 24. Defendant and its representatives have threatened to make sure that Plaintiff loses
25 his driver's license if he does not pay the alleged debt.

1 25. This threat has caused great stress to Plaintiff and his family as he is the only one
 2 who drives his two disabled children to various doctor's appointments each week.

3 26. To date, despite threats to the contrary, Defendant has not filed a lawsuit or taken
 4 other legal action against Plaintiff, thereby indicating it did not intend to take the action
 5 previously threatened.

6 27. Defendant's actions in attempting to collect the alleged debt were harassing,
 7 abusive and highly deceptive.

CONSTRUCTION OF APPLICABLE LAW

10 28. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
 11 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer
 12 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.
 13 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
 14 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status
 15 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

17 29. The FDCPA is a remedial statute, and therefore must be construed liberally in
 18 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
 19 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
 20 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the
 21 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
 22 construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
 23 2002).

30. The FDCPA is to be interpreted in accordance with the “least sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at 1318.

COUNT I

DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

31. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Defendant violated the FDCPA generally;
 - b. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in connection with the collection of an alleged debt;
 - c. Defendant violated § 1692d(2) of the FDCPA, by using obscene or profane language or language the natural consequence of which is to abuse the hearer;
 - d. Defendant violated § 1692d(5) of the FDCPA, when it caused the Plaintiff's telephone to ring repeatedly or continuously with the intent to harass, annoy or abuse Plaintiff;

- 1 e. Defendant violated § 1692e of the FDCPA by using false, deceptive, or
2 misleading representations or means in connection with the collection of a
3 debt;
- 4 f. Defendant violated § 1692e(5) of the FDCPA by threatening to take action
5 that cannot legally be taken or that is not intended to be taken;
- 6 g. Defendant violated § 1692e(10) of the FDCPA by using false representations
7 or deceptive means to collect or attempt to collect a debt;
- 8 h. Defendant violated § 1692f of the FDCPA by using unfair and
9 unconscionable means with Plaintiff to collect or attempt to collect a debt;
10 and
- 11 i. Defendant acted in an otherwise deceptive, unfair and unconscionable manner
12 and failed to comply with the FDCPA.

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15 WHEREFORE, Plaintiff, JEFF LINDSEY, respectfully prays for a judgment as follows:

- 16 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
17 1692k(a)(1);
- 18 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
19 15 U.S.C. § 1692k(a)(2)(A);
- 20 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
21 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- 22 d. Any other relief deemed appropriate by this Honorable Court.

1 **DEMAND FOR JURY TRIAL**
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PLEASE TAKE NOTICE that Plaintiff, JEFF LINDSEY, demands a jury trial in this
case.

RESPECTFULLY SUBMITTED,

DATED: 8.4.11 KIMMEL & SILVERMAN, P.C.

By: _____

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